

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No.: 3:06cr141-MEF
)	
CLAUDE JEROME WILSON, II)	

**DEFENDANT’S MOTION FOR DOWNWARD DEPARTURE
FOR DIMINISHED MENTAL CAPACITY**

COMES NOW the Defendant, **CLAUDE JEROME WILSON, II**, by and through undersigned counsel, Jennifer A. Hart, and pursuant to United States Sentencing Guidelines Section 5K2.13, moves this Honorable Court for a downward departure for diminished mental capacity. As grounds for granting this Motion, Defendant would show the following:

1. On March 5, 2007, Claude Wilson pled guilty to being a felon in possession of a firearm.
2. Pursuant to the terms of the plea agreement, Mr. Wilson reserved the right to seek a downward departure for diminished mental capacity pursuant to United States Sentencing Guidelines § 5K2.13. The Government noted that it intends to oppose such a departure and reserved the right to have Mr. Wilson examined by its own expert. The Government, however, has advised the undersigned counsel that it will not be requesting any further psychological evaluation of Mr. Wilson.
3. As set forth in the Presentence Report (“PSR”), Claude Wilson “has a significant history of documented mental illness,” which includes “a documented history of Schizo-Affective Disorder, Bi-Polar Disorder, a history of Paranoia, Anxiety, Depression, and Post Traumatic Stress

Disorder.” (PSR, ¶ 56)

4. Also noted in the PSR, is the fact that Mr. Wilson has suffered from auditory hallucinations and has had 3 suicide attempts. (PSR, ¶ 57)

5. In February 2007, at the request of the Federal Defender Office, Clause Wilson was evaluated by Clinical and Forensic Psychologist Dr. Catherine Boyer. Dr. Boyer noted that Mr. Wilson’s father was physically abusive and that the family has a history of mental disorder including Bipolar Disorder. Dr. Boyer further noted that Mr. Wilson has a history of treatment “for serious mental disorder, including psychiatric hospitalizations.”¹

6. Pursuant to U.S.S.G. § 5K2.13:

A downward departure may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense. Similarly, if a departure is warranted under this policy statement, the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

U.S.S.G. § 5K2.13 Diminished Capacity (Policy Statement) (2006).

7. Mr. Wilson is scheduled to be sentenced on May 31, 2007. At that time, the Defense expects to offer the testimony of Dr. Boyer in support of this motion for downward departure.

8. The Presentence Report prepared by United States Probation Officer Stan Robinson reveals that Mr. Wilson qualifies for application of the Armed Career Criminal guideline. Mr. Wilson does not dispute this fact. As such, the minimum sentence the Court may impose is 180 months. Furthermore, the Probation Officer has calculated Mr. Wilson’s advisory guideline range

¹ Dr. Boyer’s evaluation has previously been provided to the Government and to the United States Probation Office. It will be filed with the Court by separate motion with a request that it be placed under seal.

to be 188 to 235 months. (PSR, ¶ 68) In the plea agreement, the Government agreed that the appropriate sentence is the low end of the applicable guideline range. Accordingly, because the Court cannot sentence Mr. Wilson to less than 180 months, Mr. Wilson requests a downward departure of only one level. Such a departure would result in an advisory guideline range of 168 to 210 months. However, the range would be adjusted to reflect Mr. Wilson's status as an armed career criminal to 180 to 210 months. Mr. Wilson would request that he be sentenced to 180 months imprisonment.

9. However, it should be noted that Mr. Wilson has objected to one other paragraph of the PSR, Paragraph 27. In that Paragraph, the Probation Officer concluded that Mr. Wilson's offense level should be 34 because he "possessed the firearm in connection with a crime of violence." (PSR, ¶ 27) Mr. Wilson disputes this claim. If the Court rules in favor of Mr. Wilson with regard to this objection, Mr. Wilson's offense level would be reduced by one and, accordingly, the advisory guideline range would be 168 to 210 months (again, it would be adjusted to 180 to 210 months). Accordingly, because the lowest possible sentence that the Court may impose is 180 months, resolution of this objection may render the downward departure motion moot. Thus, in the interest of judicial economy, Mr. Wilson would request that the Court address the objection to the PSR prior to hearing evidence concerning the departure motion.

10. Regardless of how the Court ultimately sentences Mr. Wilson, it is respectfully requested that he be designated to a facility where he can receive the mental health treatment and medication which he indisputably needs to maintain a level of mental stability.

Dated this 17th day of May 2007.

Respectfully submitted,

s/Jennifer A. Hart

JENNIFER A. HART

FEDERAL DEFENDERS

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Chris Snyder, AUSA.

Respectfully submitted,

s/Jennifer A. Hart

JENNIFER A. HART

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